In the High Court of Judicature at Madras

Dated: 18/11/2004

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The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice C. NAGAPPAN

Writ Appeal No.97 of 1998

1.The Zonal Manager
Life Insurance Corporation of India.

2.The Divisional Manager
Life Insurance Corporation of India
Divisional Office
Vellore. .. Appellants

-vs-

A. Nafizur Rahiman .. Respondent

Appeal under clause 15 of the Letters Patent against the order of the Honourable Mr.Justice Y. Venkatachalam dated 15.10.1997 and made in the exercise of the Special Original Jurisdiction of the High Court in Writ Petition No.8620 of 1994 presented under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents to consider the petitioner for appointment to the post of Assistant

For appellants : Mr. P. Jayaraman,Sr. Counsel
For Mr. K.S.V. Prasad

For respondent : No appearance

:JUDGEMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.,)

The above writ appeal has been filed by the respondents in Writ Petition No.8620 of 1994 against the order of the learned single Judge dated 15.10.1997, allowing the writ petition filed by the respondent herein seeking for the issue of writ of mandamus directing the respondents in the writ petition to consider the petitioner's case on merits for appointment to the post of Assistant. Though the said writ petition was filed by two persons, namely A. Hafizur Rahiman and R. Manivannan, order was passed by the learned

single Judge only in respect of A. Hafizur Rahiman.

2. For convenience, we shall refer the parties as arrayed before the learned Judge.

3. According to the petitioner, the respondents - Life Insurance Corporation of India (in short "L.I.C.") appointed about 7,000 employees through the Employment Exchange from 1987 as Temporary Assistants / Typists / Sub Staff, etc., The petitioner is one among them appointed in October, 1989 and posted at Tindivanam. With notional breaks of service, he was employed for 463 days. Since the respondents refused to regularize the temporary employees, they approached this Court for redressal. Ultimately, a Full Bench of this Court, disposed of the matter holding that the provisions of Industrial Disputes Act,1947 are not applicable to the employees, which was also confirmed by the Supreme Court. However, the respondents - L.I.C. framed a Scheme, in order to safeguard the interest of temporary employees, which was approved by the Supreme Court. Instead of appointing and regularizing the service of the petitioner as per the Scheme approved by the Supreme Court, the respondents called for a fresh selection and failed to consider the claim of the petitioner, namely, the number of days he worked in different places, the qualification possessed, etc., Hence, the petitioner approached this Court for issuance of necessary direction in the form of Mandamus for appointing him in the post of Assistant.

4. Though the learned single Judge has observed that the respondents - L.I.C. have not filed counter affidavit, it is the grievance of the respondents that though they had the counter ready, which was not received, and no opportunity was given to their counsel to state the full facts of the case. The respondents have filed a copy of the counter affidavit in the typed set filed along with the present appeal, wherein it is stated that sub-Section (1) of Section 48 of L.I.C. Act, 1956 enables the Central Government to make Rules to carry out the purpose of the Act. Sub-section (2) of Section 48 of the Act enables the LIC with previous approval of the Central Government; by notification in the gazette of India to make regulations, not inconsistent with the Act and the rules made thereunder, for the purpose of giving effect to the provisions of the Act. The terms and conditions of service of its staff are regulated by (Staff) Regulations, 1960 . The Staff Regulations are statutory in character and the staff of the Corporation is bound by the terms thereof. By virtue of the vested power under the LIC Act, the LIC has framed Staff Regulations. In spite of the Regulations, since several writ petitions have been filed throughout India by the temporary employees, as directed by the Hon'ble Supreme Court, the LIC framed a Scheme for the purpose of regularization of employees, who are holding ad-hoc appointment for 85 days at the intervals from time to time. Based on the direction of the Supreme Court, the Corporation submitted the Scheme before the Supreme Court for approval. The said Scheme is called LIC of India Employment of Temporary Staff Instructions, 1993. The Scheme approved by the Hon'ble Supreme Court specifies that the temporary employees who worked for 85 days in two consecutive calendar years and who conformed to the required eligibility criteria on the dates of their initial temporary appointments would be eligible to apply for the posts only in which they worked in their temporary

appointment. Hence temporary employee who is covered by the Scheme could be given only age relaxation and no other concession, since he should not be found eligible to apply directly for recruitment only on the ground of age factor. It is further stated that apart from the fact that the petitioner is not eligible and not secured marks, there is no illegality or arbitrariness in the selection process. It is also stated that the entire selection process was in conformity with the Scheme approved by the Supreme Court in the order dated 23.10.1992.

5. The learned single Judge after holding that since the petitioner had put in more than four years of service, accepted the cas of the petitioner and directed the respondents to consider the petitioner's case on merits for appointment to the post of Assistant and directed that orders should be passed within 6 0 days from the date of receipt of the said order. Aggrieved by the same, the respondents therein preferred the above writ appeal.

6. None appeared for the respondent in the writ appeal and we heard Mr. P. Jayaraman, learned senior counsel for the appellants- LIC.

7. The only point for consideration in this appeal is, whether the claim of the petitioner is to be considered and the learned Judge is right in issuing direction accepting the case of the writ petitioner.
8. Inasmuch as the learned single Judge has not adverted to either the case of the petitioner nor the defence taken by the respondents - LIC, we are of the view that the said order is not helpful to us in any way for arriving at a fair and just decision.
9. As rightly pointed out by the learned senior counsel for the appellants LIC, the learned Judge committed an error in observing that at the time of filing the writ petition, the writ petitioner had put in service for more than four years, as the petitioner himself pleaded that he was employed for 463 days that too in different spells. The following details furnished by the LIC show that the observation of the learned Judge is not based on any material..
"The writ petitioner worked for 463 days between 18.10.1989 and 28.7.1992 as shows hereunder:
----------S.No.
From To Branch No.of
days
1. 18.10.1989 10.01.1990 Chidambaram 85
2. 18.01.1990 23.03.1990 Chidambaram 65
3. 17.07.1991 04.10.1991 Chidambaram 80
4. 09.12.1991 28.07.1992 Tindivanam 233

Total 463

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10. It is not in dispute that based on the Scheme, which was approved by the Supreme Court, the claim of the petitioner was considered on merits. It is demonstrated before us by the LIC that finally the petitioner

failed to qualify himself, which is evident from the following details.
"The last candidate in general selection list obtained totally 66.71 marks and secured the 244th rank whereas the writ petitioner obtained total marks of 60.29 and secured 353rd rank as shown hereunder:-

----------Roll No. Name Marks obtained in the Test % of marks in the Test Interview marks Total marks Rank
Last candidate in the General Selection List:
051875 C.Radha 71.00 50.71 16.00 66.71
244
Petitioner:
053643 A.Hafizur Rahman 62.00 44.29 16.00 60.29
353

The above information clearly show that the petitioner was not qualified by securing the required marks. In such a circumstance, we are of the view that the learned Judge has committed an error in granting the relief directing the LIC to consider him for the post of Assistant.

11. The learned senior counsel has also very much relied on the decision of the Division Bench of this Court dated 04.09.199 7 made in Writ Appeal No.864 of 1997. In that case a learned single Judge of this Court directed LIC not to appoint any other candidate in the existing selection panel for the post of Assistant for vacancies over and above the notified vacancies of 188 without marking 27% reservation for other Backward Classes in Vellore Division and also directed the respondents to call the petitioner for Trade Test for the post of Typist and appoint him as such. Aggrieved by the said order of the learned Judge, LIC preferred writ appeal in W.A.No.864 of 199 7 before the Division Bench of this Court. The division Bench by order dated 04.09.1997, after considering the earlier orders of this Court as well as the Supreme Court between the same parties, ultimately accepted the case of LIC, allowed their appeal and dismissed the writ petition filed by the petitioner therein. A perusal of the said decision, particularly the grievance of the petitioner therein, the defence of LIC and the ultimate conclusion of the Division Bench, we are of the clear opinion that the said decision is squarely applicable to the case on hand. Here again, the writ petitioner having participated in the selections process, after knowing that he was not selected, attacked the selection process, which was upheld by the Division Bench. In other words, as rightly observed by the Division Bench, the writ petitioner, who participated in the selection process cannot turn around after his non-selection and attack the same and seek to claim any right on the basis of his earlier temporary appointment or assert any claim contrary to the terms of the notification inviting applications. Since the issue raised and decided by the Division Bench is similar to the claim and grievance expressed by the writ petitioner before us, as rightly pointed out by the learned senor counsel, the said decision is applicable to the case on hand. Further, as rightly pointed out, the learned single Judge overlooked the vital fact that it is not the eligibility of the candidate alone for the post or the possession of the required qualification that would automatically entitle him

to get an appointment. It is not in dispute that though normally the writ petitioner could not satisfy the age qualification, pursuant to the scheme formulated by LIC before the Apex Court, the writ petitioner became eligible for consideration along with other candidates by competing with them and the writ petitioner also applied for the post . The writ petitioner was also allowed to undertake his written examination and on the basis of marks secured by him, he was also called for interview along with similarly placed persons and his claims were also considered as directed by the Apex Court on his own merits with all other candidates who applied for such appointments, including those from the open competition and his non selection appears to be due to his performance vis-□-vis other candidates who were considered for selection. In the earlier part we have already referred to the marks secured by the writ petitioner and he was placed at 353 rd rank and not selected for appointment. In view of the fact that it may not be possible for this Court nor was it permissible for the learned single Judge to issue direction to the appellants herein once again to consider his case or to give appointment to the writ petitioner. The learned single Judge in our view was not right in giving such relief in contravention of the orders of the Apex Court and also the very purpose of the writ petitioner sitting in the written test and interview and the assessment of merits made by authorities entrusted with the selection, when the selection is on merit basis assessed by marks, and the writ petitioner did not secure the required marks to get selected in the competition with others. As rightly observed by the Division Bench in W.A.No.864 of 1997, it is neither necessary for assigning reasons nor is it obligat ory to pass any speaking order giving detailed reasons. The process of selection for appointment laid down does not involve any adjudication and we have not been shown any statutory provision, which obliges the giving of reasons as such for non-selection, to the candidates.

Having regard to the rank secured by the writ petitioner, we see no merit whatsoever in the grievance of the writ petitioner. The learned Judge has not at all adverted to neither any of the factual details nor the decision of the Apex Court and the Division Bench decision of this Court or the marks and rank secured by the petitioner. For all these reasons stated above, we are unable to agree with the learned single Judge's view that the writ petitioner is entitled to the relief as claimed by him and granted by the learned Judge. We accept the case of the appellants - LIC and consequently, the writ appeal is allowed and the writ petition shall stand dismissed. No costs.

Index:Yes
Internet:Yes

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To

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2. The Divisional Manager

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